

## 2. Eligibility

(a) You must have insurance under the Nursery Crop Insurance Provision, 7 CFR 457.162, in effect for the crop year that this endorsement applies;

(b) You must have elected either the limited or additional level of coverage.

(c) You must submit a peak inventory value report which will serve as the application for coverage under this endorsement. We may reject the peak inventory value report if all requirements in this endorsement and the Nursery Crop Insurance Provisions are not met.

(d) You may purchase no more than two Peak Inventory Endorsements for each practice during the crop year unless you have suffered insured losses and have restocked your nursery.

## 3. Coverage

(a) The amount of insurance provided under the Nursery Crop Insurance Provisions is increased by the peak amount of insurance for the coverage term.

(b) Except as provided herein, this endorsement does not change, amend or otherwise modify any other provision of your Nursery Crop Insurance Policy.

## 4. PEAK INSURANCE PERIOD

Coverage begins at 12:01 a.m. on the coverage commencement date and ends at 11:59 p.m. on the coverage termination date.

## 5. Premium

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate premium rate and by any premium adjustment factors listed in the actuarial documents that may apply.

(b) The premium for this endorsement is due and payable in accordance with section 7 of the Nursery Crop Insurance Provisions.

## 6. Reporting Requirements

In addition to the reporting requirements of section 6 of the Nursery Crop Insurance Provisions, you must submit a peak inventory value report on our form.

## 7. Liability Limit

The peak amount of insurance is limited to the practice value you declare under the Nursery Crop Insurance Provisions.

[63 FR 50979, Sept. 24, 1998; 63 FR 57047, Oct. 26, 1998]

**PART 458—SPECIAL CALIFORNIA CROP INSURANCE REGULATIONS****Subpart—Regulations for the 1992 through 1994 Crop Years**

Sec.

458.1 Availability of Special California citrus crop insurance.

458.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

458.3 OMB control numbers.

458.4 Creditors.

458.5 Good faith reliance on misrepresentation.

458.6 The contract.

458.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 56 FR 30490, July 3, 1991, unless otherwise noted.

**Subpart—Regulations for the 1992 through 1994 Crop Years****§ 458.1 Availability of Special California citrus crop insurance.**

Insurance shall be offered under the provisions of this subpart on citrus in California counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

**§ 458.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.**

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for California citrus which will be included in the actuarial table on file in the applicable service offices for the county.

(b) At the time of application, the applicant will select the coverage level (50%, 65%, or 75%) for the 1993 and 1994 crop years. The coverage level for the 1992 crop year will be level 1 (50%). The price selection for the 1992 crop year will be established by the actuarial tables for the applicable type for the crop year.

## **§ 458.3**

### **§ 458.3 OMB control numbers.**

The OMB control numbers are contained in subpart H of part 400, Title 7 CFR.

### **§ 458.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to my benefit under the contract.

### **§ 458.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the Special California citrus insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00 finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

### **§ 458.6 The contract.**

The insurance contract shall become effective upon the written acceptance

## **7 CFR Ch. IV (1-1-01 Edition)**

on the Corporation's form by the insured of the Corporation's insurance offer. Said offer will be extended only after receipt by the corporation of an application for insurance on a form prescribed by the Corporation and inspection of the grove by the Corporation. The applicant will have 15 calendar days from the date the insurance offer is tendered to accept such offer. The offer will be withdrawn thereafter if not accepted. The contract shall cover the citrus crop as provided in the policy. The contract shall consist of the application, the insurance offer, the acceptance, the policy, an annual field inspection report, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable services offices.

### **§ 458.7 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the citrus crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at any designated service office on or before the applicable sales closing date.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period.

However, if adverse conditions should develop during such period, the Corporation may discontinue the acceptance of applications.

The provision of the Special California Insurance Policy for the 1992 through 1994 crop years are as follows:

*Special California Citrus Crop Insurance Policy*

(This is a three (3) year term contract. Refer to Section 15.)

## Federal Crop Insurance Corporation, USDA

§ 458.7

*Agreement to Insure:* We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, “you” and “your” refer to the insured shown on the accepted Application and “we,” “us,” “our” refer to the Federal Crop Insurance Corporation.

NOTE: This is a three year policy of insurance. The Corporation, after inspection of the grove, will extend to the applicant, an offer of insurance. Upon acceptance of that offer a contract of insurance will be in existence. The first year's premium and the estimated premium for the remaining two years are due and payable to the Corporation within 45 days of acceptance of the insurance offer. The amount of production used to compute the insurance offer each year will be determined only after the Corporation's annual inspection of the insured's grove. The amount of premium for each of the remaining two years will be determined as a result of the corporation's inspection.

### TERMS AND CONDITIONS

#### 1. Causes of Loss

(a) For the 1992 crop year the insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Frost;
- (2) Freeze;
- (3) Excess moisture; and
- (4) Hail.

(b) For the 1993 and 1994 crop years the insurance provided is against those causes listed in subsection 1.(a) above, and the following causes occurring within the insurance period:

- (1) Fire;
- (2) Wildlife;
- (3) Excess heat;
- (4) Excess wind;
- (5) Tornado;
- (6) Earthquake;
- (7) Volcanic eruption;

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; or

(9) Direct Mediterranean Fruit Fly damage; unless those causes are expected, excluded, or limited by the actuarial table or subsection 9.(f)(7).

(c) We will not insure against any loss of production due to:

- (1) Fire, where weeds and other forms of undergrowth have not been controlled or tree-pruning debris has not been removed from the grove;
- (2) The neglect, mismanagement, abandonment, or wrongdoing of you, any member of your household, your tenants, or employees;
- (3) The failure to follow recognized good citrus grove practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The failure to carry out a good citrus irrigation practice;

(6) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(7) Any cause not specified in section 1.(a) or 1.(b), as applicable, as an insured loss.

#### 2. Crop, Acreage, and Share Insured

(a) The crop insured will be all of the following citrus types you elect, which are grown in the country on insured acreage and for which a premium rate is provided by the actuarial table:

- Type I—Navel oranges;
- Type II—Sweet oranges;
- Type III—Valencia oranges;
- Type IV—Grapefruit;
- Type V—Lemons;
- Type VI—Kinnnow mandarins;
- Type VII—Minneola tangelos; or
- Type VIII—Orlando tangelos.

(b) The acreage insured for each crop year will include all acreage of citrus of the type(s) elected pursuant to section 2.(a), located on insurable acreage as designated by the actuarial table and in which you have a share at the time insurance attaches for the 1992 crop year.

(c) The insured share is your share as landlord, owner-operator, or tenant in the insured citrus on the date insurance attaches.

(d) We do not insure any acreage:

- (1) Which is not irrigated; and
- (2) On which the trees have not reached the sixth growing season after being set out.

(e) Insurance will not attach or be considered to have attached to any acreage of the crop, for each crop year, until the acreage has been inspected and accepted by us. Tree damage occurring prior to the insured crop year will result in a commensurate reduction in yield guarantee for a subsequent years insurance coverage.

(f) We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to the date insurance attaches.

#### 3. Report of Acreage, Share, Number of Trees, and Practice

You must report on our form:

(a) All of the acreage of citrus in the country in which you have a share;

(b) The practice;

(c) Your share on the date insurance attaches; and

(d) The number of bearing trees.

You must designate separately any acreage in which you have an interest that is not insurable. The 1992 crop year acreage report must accompany your application for insurance coverage under this contract.

For the 1993 and 1994 crop years, the designated acreage will remain the same as that

## § 458.7

## 7 CFR Ch. IV (1-1-01 Edition)

noted for 1992 unless, as a result of a subsequent field inspection, we determine that some covered acreage has suffered structural damage sufficient to make it uninsurable. This report must be submitted annually thereafter on or before January 10.

### 4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

(a) The coverage levels and prices for computing indemnities are contained in the actuarial table.

(b) Coverage level 1 will apply for the 1992 crop year.

(c) You may select any coverage level for the 1993 and 1994 crop years at the time of application.

(d) The price election for the 1992 crop year will be the maximum available for the 1992 crop year as shown on the actuarial table. The price election for the 1993 and 1994 crop years will be the maximum available as shown on the 1993 crop year actuarial table.

(e) You must report production and acreage to us for at least the four-year period 1987 through 1990 when the application is submitted. However, if the trees had not reached the sixth growing season in 1987, only those years in which the trees were six years or older must be reported. Your guarantee for each crop year will be based on your production history and our appraisal of current crop potential.

In no case will the insurance yield on which the guarantee is based be greater than can be supported by the production history.

### 5. Premium

(a) The premium amount for each crop year is computed by multiplying the applicable production guarantee as determined in section 4.(e) times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches for the 1992 crop year.

(b)(1) The premium for the 1992 crop year is earned at the time the insurance attaches and must be paid within 45 days of acceptance of the Corporation's insurance offer by the applicant. The insurance will be considered accepted when you agree, in writing, to the insurance offer. In addition, a premium deposit for the 1993 and 1994 crop years, calculated as in subsection 5.(a) above, must be submitted within 45 days of the acceptance of the insurance offer. The premium deposit amount will be calculated based on the factors selected for the 1993 and 1994 crop years.

(2) Failure to pay the premium within 45 days of the acceptance of the insurance offer will result in:

(i) The insured being charged interest at a rate of fifteen (15%) percent annum, from the due date of the premium payment to the date actually paid;

(ii) The elimination of the discount permitted under subsection (c) below;

(iii) The withholding of any indemnities payable under the policy until payment is made in full; and

(iv) Legal action to collect the required premium payment.

(c) The 1993 and 1994 crop year premium deposits will be adjusted as follows to reflect the present value of the premium (based on an average annual interest rate of seven percent (7%):

(1) The premium deposit amount for the 1993 crop year will be multiplied by 0.935; and

(2) The premium deposit amount for the 1994 crop year will be multiplied by 0.873.

(d) A portion of the premium deposit may be refunded if, upon subsequent annual field inspections, it is determined that the trees on insured acreage have been damaged in a manner that will result in subsequent production losses. Adjustments will be made to eliminate that portion of guaranteed production relating to tree damage and a pro-rata portion of the premium deposit will be returned to you.

### 6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

### 7. Insurance Period

For the 1992 crop year, insurance attaches at the time the Corporation's insurance offer is accepted by the insured. For the 1993 and 1994 crop years, insurance attaches on the December 1 prior to the calendar year of normal bloom, and ends at the earliest of:

(a) Total destruction of the citrus;

(b) Harvest of the citrus;

(c) Final adjustment of a loss; or

(d) The date following the year in which the bloom is normally set as follows:

(1) August 31 for Navel oranges and Southern California lemons;

(2) November 30 for Valencia oranges; or

(3) July 31 for all other types of citrus.

### 8. Notice of Damage or Loss

(a) In case of damage or probable loss:

(1) You must give us prompt written notice:

(i) After insured damage to the citrus becomes apparent, giving the dates and causes of such damage; or

(ii) If you decide not to further care for or harvest any part of the insured citrus crop.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. If harvest will

begin after the end of the insurance period, notice must be given on or before the calendar date for the end of the insurance period.

(b) You must obtain written consent from us before you destroy any of the citrus which is not to be harvested.

(c) We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

#### 9. Claim for Indemnity

(a) Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the citrus on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

(b) We will not pay any indemnity unless you:

(1) Establish the total production of citrus on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

(c) The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of citrus to be counted (see section 9.(f));

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

(d) If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all the production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

(e) If a determination is made that frost protection equipment was not properly utilized or not properly reported, the indemnity for the unit will be reduced by the percentage of premium reduction allowed for frost protection equipment. You must, at our request, provide us records showing the start-stop times by date for each period the equipment was used.

(f) The total production (cartons) to be counted for each unit will include all harvested production marketed as fresh packed fruit and all appraised production determined to be marketable as fresh packed fruit.

(1) Any production will be considered marketed or marketable as fresh packed fruit unless, due to insurable causes, such production was not marketed or marketable as fresh packed fruit.

(2) In the absence of acceptable records to determine the disposition of harvested citrus, an amount of citrus equal to the guarantee will be treated as production to count.

(3) Appraised production to be counted will include:

(i) Unharvested production, and potential production lost due to uninsured causes and failure to follow recognized good citrus grove practices;

(ii) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent.

(4) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(i) Harvested; or

(ii) Further damaged by an insured cause and reappraised by us.

(5) Citrus which cannot be marketed due to insurable causes will not be considered production.

(6) The amount of production of any unharvested citrus may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the citrus is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

(g) You must not abandon any acreage to us.

(h) You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

(i) We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity.

The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

(j) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

(k) If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

#### 10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

#### 11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

#### 12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

#### 13. Subrogation. (Recovery of Loss From a Third Party)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

#### 14. Records and Access To Grove

You must keep, for 3 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all citrus produced on each unit including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the grove for purposes related to the contract.

#### 15. Life of Contract: Cancellation

(a) This contract will be in effect for the crop years 1992, 1993 and 1994, and may not be canceled by you.

(b) If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will continue in force through the end of the insurance period (1994 crop year).

#### 16. Meaning of Terms

For the purposes of California citrus crop insurance:

(a) *Actuarial table*—means the forms and related material for the crop year approved by us and which show the coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding citrus insurance in the county.

(b) *Carton*—as to each insured citrus type, means the standard container for marketing fresh packed fruit as shown below by citrus type. In the absence of marketing records on such a carton basis, production will be converted to cartons on the basis of the following average net pounds of packed fruit in a standard packed carton:

Container Size	Types of Fruit	Pounds
Container #58 ...	Navel oranges, Valencia oranges & Sweet oranges .....	38
Container #58 ...	Lemons .....	40
Container #59 ...	Grapefruit .....	32
Container #63 ...	Tangerines (including Tangelos) & Mandarin oranges .....	25

(c) *Contiguous land*—means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

(d) *County*—means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

(e) *Crop year*—means the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

(f) *Direct Mediterranean fruit fly damage*—means the actual physical damage to the citrus on the unit which causes such citrus to be unmarketable and will not include unmarketability of such citrus as a direct result of a quarantine, boycott, or refusal to accept the citrus by any entity without regard to actual physical damage to such citrus.

(g) *Harvest*—means the severance of mature citrus from the tree either by pulling, picking, or by mechanical or chemical means.

(h) *Insurable acreage*—means the land classified as insurable by us and shown as such by the actuarial table.

(i) *Insured*—means the person who submitted the application accepted by us.

(j) *Person*—means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(k) *Service office*—means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

(l) *Tenant*—means a person who rents land from another person for a share of the citrus or a share of the proceeds therefrom.

(m) *Unit*—means all insurable acreage in the county of any one of the citrus types referred to in section 2 of this policy, located

on contiguous land on the date insurance attaches for the crop year: (1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the citrus on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

#### 17. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

#### 18. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations (7 CFR 400, Subpart J).

#### 19. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.